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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/606,325

06/25/2003

Carl R. Vanderschuit

9053-000094US

3193

7590

11/03/2004

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EXAMINER

SAWHNEY, HARGOBIND S

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/606,325	Applicant(s) VANDERSCHUIT, CARL R.	
	Examiner Hargobind S Sawhney	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14 and 17-25 is/are rejected.
- 7) ☒ Claim(s) 13, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/5/04, 7/29/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The preliminary amendment filed on June 25, 2004 and the information disclosure statements filed on May 5, 2004; July 29, 2003; and June 25, 2003 have been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following claimed matters must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim 7, lines 1 and 2, "the headwear piece comprises a visor" claims a visor in addition to a bill extending from the head attachment of the independent Claim 6. It appears that the bill and the visor are two separate items.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The claim 7 of the instant application has been examined considering the visor as a structural element detachably attached the bill of the headwear.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 17, 18, 20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Koczi (US Patent No.: 5,921,674).

Koczi ('674) discloses a lighted headwear 16 (Figure 5a) comprising:

- a head attachment portion – an upper dome-shaped portion – (Figure 5a, column 4, line 37-39);
- a bill – the lower planer portion – extending from the head attachment portion (Figure 5a, column 4, line 37-39);

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- a display device – an electronic assembly including element 5 – (Figures 1-4 and 5a, column 4, lines 39- 43);
- a controller 2 for controlling the operation of the display device (Figures 1-3, column 2, lines 58-60 and 63-67);
- the display device including a plurality of light emitting diodes (LEDs) 5 (Figure 5a, column 4, line 39);
- the controller 2 capable of receiving a signal for providing data from an external source (Figures 1-3 and 5a, column 4, lines 39-43); and
- the controller 2 allowing manual input for display (Figures 1-3 and 5a, column 2, lines 63-67).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 6 and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Hanley (US Patent No.: 6,733,150 B1).

Regarding claims 6 and 8-10, Hanley ('150 B1) discloses a lighted headwear 10 (Figure 1) comprising:

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- a bill 108 extending from the head attachment portion 101, and a light source 130 positioned within the bill 108 (Figure 1, column 3, lines 25-29 and 45-47);
- the light source 130 directing light through the portion of the bill 108 (Figure 1, column 3, lines 25-29, 45-47 and 52-54);
- the light source 130 further including a lens 234 receiving and focusing light emitted by a light emitting diode (LED) 230 (Figures 1, 2 and 5, column 4, lines 39-51 and column 5, lines 54-56).

7. Claims 6 is rejected under 35 U.S.C. 102(e) as being anticipated by Polaire (US Patent No.: 6,721,962 B1).

Polaire ('962 B1) discloses a lighted headwear 10 (Figure 1) comprising:

- a bill 30 extending from the head attachment portion 20, and a light source 50 positioned for directing light through a portion of the bill 30 (Figure 1, column 3, lines 15-19).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwasa et al. (Japanese patent No.: JP 2001-11716).

Regarding Claim 1, Iwasa et al. (Japanese patent No.: JP 2001-11716), hereinafter referred as Iwasa, discloses a lighted headwear comprising:

- a bill 31 extending from a head attachment portion – the upper dome-shaped enclosure (Figure 4, English translated abstract); and
- a black light source 35 (Figure 4, English translated abstract) for directing black light at a black light responsive portion 37 (Figures 4 and 5).

However, Iwasa teaches the black light responsive portion positioned on the head attachment portion instead of that included on the bill as claimed by the applicant.

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the indicating apparatus of Iwasa by relocating the black light responsive part on the bill, since it has been held that rearranging parts of an invention involves only routine skill in the art.

Regarding Claim 2, Iwasa teaches the black light source being a black light emitting diode (LED) 35 (Figure 4, English translated abstract).

10. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwasa et al. (Japanese patent No.: JP 2001-11716). in view of Peng (US Patent No.: 5,510,961).

Regarding claims 3 and 4, Iwasa et al. (Japanese patent No.: JP 2001-11716), hereinafter referred as Iwasa, discloses a lighted headwear comprising a black light emitting light source positioned on the bill of the headwear. Iwasa does not specifically

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teach the black light source being positioned either partially or entirely within the bill of the headwear.

On the other hand, Peng ('961) discloses an illuminated cap structure 10 (Figure 4, including light sources 17 concealed within the bill structure of the headwear 10 (Figure 4, column 1, lines 28-30 and 52-54, and column 2, lines 1-11).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the headwear of Iwasa by positioning the light source within the bill as taught by Peng ('961) for benefit and advantage of keeping outer appearance of the headwear unaffected by the light source concealed within the bill.

11. Claims 5, 6 and 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whittaker (US Patent No.: 5,647,064) in view of DeMars (US Patent No.: 5,323,492).

Regarding Claim 5, Whittaker ('064) discloses a headwear 10 (Figure 1) comprising a head attachment 12 and a bill 14 extending from the head attachment 12 (Figure 1, column 2, lines 28-31).

However, Whittaker ('064) does not teach a light source including a chemiluminescent material positioned adjacent an edge portion of the bill.

On the other hand, DeMars ('492) discloses an illuminated headwear 10 including a chemiluminescent material 36 positioned adjacent edges of ears 24 attached to a head attachment 12 (Figure 1, column 2, lines 59-62 and column 3, lines 2,3 and 37-46).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the headwear of Whittaker ('064) by providing a chemiluminescent material as taught by DeMars ('492) for benefit and advantage improving ornamental value of the cap by adding illuminating means.

Regarding Claim 6, Whittaker ('064) discloses a headwear 10 (Figure 1) comprising a head attachment 12 and a bill 14 extending from the head attachment 12 (Figure 1, column 2, lines 28-31).

However, regarding claims 6, Whittaker ('064) does not teach a light source positioned for directing light through a portion of a bill.

On the other hand, DeMars ('492) discloses an illuminated headwear 10 including a chemiluminescent material 36 positioned adjacent edges of ears 24 attached to a head attachment 12 (Figure 1, column 2, lines 59-62 and column 3, lines 2,3 and 37-46).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the headwear of Whittaker ('064) by providing the light source as taught by DeMars ('492), and positioning the light source adjacent an edge portion for benefit and advantage improving ornamental value of the cap by adding illuminating means.

Regarding Claim 12, Whittaker ('064) in view of DeMars ('492) further teaches the headwear including a chemiluminescent material as the light source.

12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanley (US Patent No.: 6,733,150 B1) in view of Ellman et al. (US Patent No.: 6,044,495).

Hanley ('150 B1) discloses a lighted headwear including a bill extending from the head attachment. However, Hanley ('150 B1) does not teach the headwear additionally including a visor as claimed by the applicant.

On the other hand Ellman ('495) discloses a headwear including a head attachment 34 and a bill 24 extending from the head attachment 34, and a visor 20 detachably attached to the bill 24 (Figure 1, column 3, lines 13-21). The visor 20 additionally includes a colored patterned material with logos (Figure 1, column 4, lines 6 and 7).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the headwear of Hanley ('150 B1) by providing a visor as taught by Ellman ('495) for benefits of achieving variation in colors and logo.

13. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanley (US Patent No.: 6,733,150 B1) in view of Iwasa et al. (Japanese patent No.: JP 2001-11716).

Hanley ('150 B1) discloses a lighted headwear including a bill extending from the head attachment, However, Hanley ('150 B1) does not teach: the bill including a portion responsive to black light; and the light source including at least one black light emitting diode.

On the other hand, Iwasa et al. (Japanese patent No.: JP 2001-11716), hereinafter referred as Iwasa, discloses a lighted headwear comprising:

- a bill 31 extending from a head attachment portion – the upper dome-shaped enclosure (Figure 4, English translated abstract); and

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- the bill including a portion 37 responsive to black light emitted by a black light emitting diode (LED) 35 (Figure 4, English translated abstract).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the headwear of Hanley ('150 B1) by providing a headwear with a bill with a portion responsive to black light, and the bill bearing at least one black LED as taught by Iwasa for the benefits of improving attention value of the headwear by adding illuminating means.

14. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whittaker (US Patent No.: 5,647,064) in view of Otsuka (Japanese Patent No.: JP 405151808 A), hereinafter referred as Otsuka.

Whittaker ('064) discloses a headwear 10 (Figure 1) comprising a head attachment 12 and a bill 14 extending from the head attachment 12 (Figure 1, column 2, lines 28-31).

However, Whittaker ('064) does not teach a light source including a tubular, flexible member, light-transmissive member optically coupled to a light source, and the light-transmissive, flexible tubular member adapted to be positioned along the edge portion of a bill of the headwear.

On the other hand, Otsuka discloses a tubular, flexible member, light-transmissive member 1 optically coupled to a light source 3, and the light-transmissive, flexible tubular member 1 (Otsuka, Figure 1, English translated abstract) positionable – adapted - along the edge portion of a bill 14 of the headwear 10 (Whittaker, Figure 1, column 2, lines 28-31).

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It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the headwear of Whittaker ('064) by providing the light-transmissive, flexible tubular member the as taught by Otsuka, and positioning the light source along an edge portion for benefit and advantage improving attention value of the headwear by adding light spreading means with less number of light emitting sources.

15. Claims 19, 21 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koczi (US Patent No.: 5,921,674).

Regarding Claim 19, Koczi ('674) discloses a lighted headwear 16 (Figure 5a) comprising a display device positioned on the head attachment portion, instead of the display device positioned along the edge portion of the bill of the headwear.

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the headwear of Koczi (' 674) by relocating the display device to the edge portion of the bill, since it has been held that rearranging parts of an invention involves only routine skill in the art.

Regarding, Claim 21, Koczi ('674) discloses a lighted headwear 16 (Figure 5a) further comprising:

- the controller 2 capable of receiving a signal for providing real-time data from an external source (Figures 1-3 and 5a, column 3, lines 34-36, column 4, lines 24-26 and 39-43).

However, Koczi ('674) does not specifically teach the indicia displayed by the display device providing real-time stock quotes.

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It has been held that a recitation with respect to the manner in which a claim apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitation.

Regarding claims 23-25, Koczi ('674) discloses a lighted headwear 16 (Figure 5a) comprising:

- the controller 2 capable of receiving a signal for providing data from an external source (Figures 1-3 and 5a, column 4, lines 39-43) for activation of light sources at least one headwear (Figure 4, column 4, lines 24-26).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to apply the teaching of lighted headwear elements of Koczi (' 674) for following the steps for assembling the headwear as claimed.

Allowable Subject Matter

16. Claims 13,15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record, including Hanley (US Patent No.: 6,733,150 B1) and Polaire (US Patent No.: 6,499,145,B1) does not show or suggest the applicant's invention as claimed. Specifically, the prior art of record does not disclose a headwear combining:

- a tubular, flexible member, light-transmissive member optically coupled to a light source, and the light-transmissive, flexible tubular member being coupled an edge portion of a bill of the headwear as recited in claims 13 and 16; and
- a light-transmissive, flexible tubular member including a longitudinal slit sized to frictionally receiving the edge portion of the bill of a headwear as recited in Claim 15.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Waters et al. (U.S. Patent No.: 6,659,618 B2), Marston (U.S. Patent No. Application Pub. No.: US 2003/0151910 A1), Pfaeffle (U.S. Patent No. 5,931,559), Douglas (U.S. Patent No. 5,809,678), Newsome (U.S. Patent No. 5,676,449), Kronenberger (U.S. Patent No. 5,404,593), Shen (U.S. Patent No. 4,901,211) and Heminover (U.S. Patent No. 4,231,079)

Each of the above-indicated prior arts discloses an illuminated headwear comprising some of the claimed features claimed by the applicant.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hargobind S Sawhney whose telephone number is 571 272 2380. The examiner can normally be reached on 6:15 - 2:45.

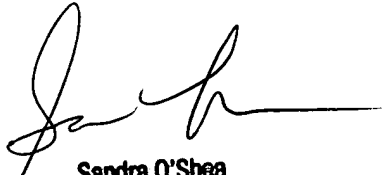
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571 272 2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HSS

10/26/2004



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